

REMARKS

Applicants have amended the Specification to insert Headings at appropriate and specifically identified locations in compliance with the Examiner's suggestion and published guidelines.

Claims 1-14 and 16-21 are rejected under 35 USC 103 (a) as being unpatentable over Kendrick (EP 0999259) in view of Going (US 3, 186, 854) in view of Haroldson and the admitted state of the prior art. Applicants respectfully submit that the rejection is improper and should be withdrawn for the reasons articulated below. Disparate prior art has been assembled in a manner which lacks the required articulation of specific reasoning as to why one skilled in the art would consult these references expecting to find a resolution to the problem at hand.

The Examiner begins with the assertion that one skilled in the art would consult Kendrick's method of treating triglyceride fish oil compositions while seeking a solution to a problem in stabilizing *concentrates of ethyl esters of polyunsaturated fatty acids*. In so doing, the Examiner initially concedes that Kendrick concerns different materials but then specifically overlooks the differences in starting materials and apparently lumps all fish oil related processes into a single bucket. However, concentrates of ethyl esters of polyunsaturated fatty acids are not the same as the raw triglyceride fish oils and one skilled in the art would not presume to treat the two alike and the Examiner cannot take this position without articulating a rational basis for that presumption.

The Examiner next combines the teaching of steam deodorization of the fish oil triglyceride composition of Kendrick with a crystallization stabilizer as taught by Going. In his disclosure, Going describes efforts to solve a cold stability issue in a described range of vegetable oils (i.e. for home cooking use). Going described a cloudiness problem and identified a range of potentially useful crystallization inhibitors. These crystallization stabilizers are described by Going at col. 3, line 45

to col. 4, line 15 as including "certain esters of polyhydric alcohols and other hydroxy compounds with long chain fatty acids".

In proposing the current combination, the Examiner thus ignores important compositional differences in the materials disclosed in the Kendrick and Going references. One skilled in the art would not attempt to treat the triglyceride polyunsaturated fatty acid fish oil of Kendrick with "esters of polyhydric alcohols with long chain fatty acids" as disclosed by Going. In order to avoid improper use of hindsight the Examiner must consider Going's description of crystallization inhibitors as a whole instead of narrowly focusing on the included disclosure of lecithin. In short, one skilled in the art upon reading Going would not expect to find a useful combination since Going's additives include materials of the same character as the triglyceride/polyunsaturated fatty acid oil which was steam deodorized by Kendrick. One skilled in the art would not expect to find a crystallization stabilizing benefit in combining similar materials and would thus have discarded the teachings of Going as not potentially useful in the context of Kendrick and continue to search elsewhere. In short, the proposed combination of disclosures would not have been reached.

The Examiner next points to Haraldson and Applicants own disclosure for the proposition that ethyl esters of polyunsaturated fatty acids are known, a point which Applicants concede. Haraldson discloses the transesterification of triglyceride fish oils in the presence of various lipases. However, nothing in Haraldson alludes to an odor problem related to the various enzymatically produced mixtures of desirable esters and range of byproducts thus obtained. Accordingly, Haraldson does not even appreciate the problem which Applicants have overcome with the present invention.

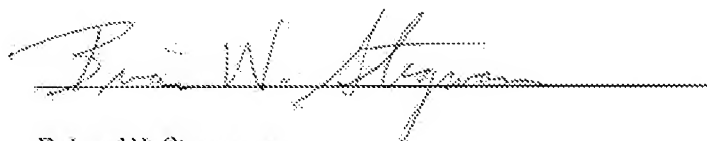
With respect to the rejection under 35 USC 112 the Examiner admits that the specification at page 5, line 10 contains an enabling disclosure for the temperature range of 120 - 150°C. However, the disclosure regarding specific conditions for a

standard deodorisation process are given in the whole of paragraph 2 at page 5. Applicants note that the temperature of 120 - 150°C is disclosed in combination with a pressure of 0.1 - 10 mbar. Accordingly, one skilled in the art is informed how to operate the process over a range of temperature and pressure combinations. It is respectfully submitted that the Examiner has not cited any literature or reference basis for the bare allegation that a person skilled in the art is not enabled by the specification to practice the invention commensurate in scope with the claims. The posited argument "... because the boiling point of the ethyl ester of a fatty acid is generally lower than [that of] the corresponding fatty acid" is put forth without any literature support and ignores the fact that marine oils do not consist of fatty acids but instead contain their glycerol esters. Therefore, the person skilled in the art is indeed in a position to work the invention as broadly as claimed in claim 1 based on the disclosure in the specification.

In light of the above Amendments and Remarks, Applicants respectfully request withdrawal of rejections of record and early allowance of the claims. A separate Petition for Extension of Time is being filed herewith along with the required fee. If additional fees are deemed to be due, however, the Commissioner is authorized to charge any fees, or credit any overpayment, to Deposit Account No. 50-4255.

Respectfully submitted,

Date Nov 18, 2009



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